

## **REMARKS**

### **In the claims**

Claims 1–7 and 9–16 are currently pending with claims 8 and 17 cancelled without prejudice or disclaimer and claims 18–19 withdrawn from consideration. Claims 20–22 are added by this paper.

### **Claim amendments**

New claims 20 –22 recite additional aspects of the instant invention and are fully supported by the specification, as originally filed. New claim 20 is supported, for example, by the disclosure contained in page 19 and page 33, 2<sup>nd</sup> paragraph of the instant specification. Support for new claim 21 can be found at, for example, pages 39–40 of the instant specification. New claim 22 recites preferred embodiments of the compounds claimed in claim 20.

It is respectfully submitted that amendments to claims 1–3 do not add new matter.

### **Restriction/election**

Applicants' traversal of the Requirement for Restriction has been maintained. It is argued at page 2 of the open Office Action, that the claims of the various groups do not "possess a special technical feature." However, as previously noted, it is clear for the Markush Practice situation, the administrative instructions do *not* require that patentability be based on the "special technical feature." The rules require only "common structure" or belonging to a "recognized class" of compounds. The only mention of novelty is the notation that, if it can be shown that at least one Markush alternative is not novel over the prior art, the question of unity of invention "shall be reconsidered." The instructions then state that reconsideration does not necessarily imply that an objection of lack of unity shall be raised. It is thus evident that patentability over the art is *not* required in the Markush situation to establish unity of invention. Rather, the special technical feature need only

possess common structure and a common property or activity. Common structure is evident, as noted in the Office Action, from the claims. Common properties are evident in that, as stated in the specification, the compounds have action on the central nervous system. Accordingly, it is submitted that the requirement for a special technical feature is satisfied, that unity of invention is clearly present in the present compounds, and that the requirement for restriction should be withdrawn. The same is respectfully requested.

### **Claim objections**

Claims 1–4 stand objected due to allegedly containing non-elected variables. This objection is respectfully traversed.

In view of Applicants' arguments and amendments, it is respectfully submitted that a search and examination of the broad genus of compounds should be performed. Moreover, as Applicants have the right to petition the restriction requirement, it is clear that Applicants can maintain the non-elected subject matter to preserve that right. See, MPEP § 803.02. It is respectfully submitted that the pending objection be withdrawn.

Claims 8–11 stand objected as allegedly being substantial duplicates of claim 1. Applicants respectfully traverse with this objection.

The objection of claim 8 is moot in view of cancellation of that claim. It is further submitted that claims 9–11 in their amended form are drawn to distinct aspects of the Applicant's invention are not duplicates of one another. Withdrawal of the rejection is respectfully requested.

### **Rejection under 35 U.S.C. §101**

The Examiner's careful reading of the claims is appreciated. The claims have been amended to recite process claims in accordance with conventional US practice. The rejection is therefore moot in view of the amendments. Withdrawal of the rejection is respectfully requested.

**Rejection under 35 U.S.C. §112, first paragraph**

As a corollary to the rejection under 35 U.S.C. §101, claims 12–16 stand rejected under 35 U.S.C. §112, first paragraph. The rejection is now moot in view of amendments. Withdrawal of the rejection is respectfully requested.

**Rejection under 35 U.S.C. §112, second paragraph**

Claims 1–4 together with claims 2–3 stand rejected under 35 U.S.C. §112, second paragraph as allegedly being indefinite. The rejection is moot in view of the amendments. Withdrawal of the rejection is respectfully requested.

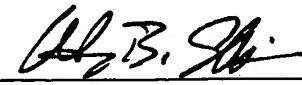
**Rejection under 35 U.S.C. §102(b)**

The rejection of claims 1 and 3 under 35 U.S.C. §102(b) as allegedly being anticipated by Peglion et al (US 6,399,616) is respectfully traversed.

Page 10 of the Office Action alleges that the 4-{4-[2-(1H-Indol-5-yl)ethyl]-1-piperazinyl}furo[3,2-c]pyridine compound of Peglion anticipates the compounds claimed by the instant invention. In view of Applicant's amendment of claim 1, it is respectfully submitted that the pending anticipation rejection is moot. See also, new claim 20 and the claims dependent therefrom. Since Peglion's compounds do not encompass all the structural elements of the compounds claimed by the instant invention, the cited reference cannot anticipate or render obvious what is claimed by the instant invention. Withdrawal of the rejection is respectfully requested.

A check in the amount of \$450.00 is enclosed for the two-month extension of time fee. No other fees are believed to be due with this response, however, the Commissioner is hereby authorized to charge any fees associated with this response to Deposit Account No. 13-3402.

Respectfully submitted,

  
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